

1696. *December 11.* WILLIAM LAW and CHRISTIAN WHITE *against* JOHN GIBSON.

I REPORTED William Law and Christian White, against John Gibson, merchant in Edinburgh, who having married Agnes Law, daughter to the said William and Christian, there are no contractors with the said John, in his contract-matrimonial, but the said Agnes, and Christian, her mother, for £1000 Scots of tocher, in regard the father had for many years separated from his wife, and lived at London; and, by a clause of the contract, it was provided, That if there should be no bairns surviving of the marriage, then 500 merks of the tocher should return to the wife's nearest of kin. The marriage dissolved by the wife's death; and William Law, the father, pursues John Gibson, before the Sheriffs of Edinburgh, to restore the whole tocher, in regard it was paid out of his means, by his wife, without his knowledge and consent, which she could not do. The Sheriffs allowed him 500 merks as a complete tocher, and decerned him to pay the remanent 1000 merks; as also to restore some household-plenishing his wife lent her daughter, conform to a declaration, under her hand, acknowledging the borrowing.

This decret being suspended, John Gibson insisted on thir reasons,---That it was generally believed her husband was dead; and she gave herself out for a widow; and he had been many years absent; and he was *in bona fide* to contract with them. Besides, his wife had a *separatum peculium* of her own, having traded and kept a shop before her marriage, and so it might be out of her own means; and her declaration cannot militate against him to infer any ground of debt upon him.

The Lords, before answer, allowed a probation, That, at the time of the marriage, the husband was holden and reputed dead, and she gave herself out as his relict; and that the daughter kept a shop apart and traded, and whether the mother furnished her with the merchant-ware or not: And found the wife's declaration not probative against the husband; but allowed them to astruct, or adminiculate the same by his oath, or *prout de jure* by witnesses, that the plenishing was only lent.

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1696. *December 11.* CAMPBELL of LOCHDOCHART *against* MR DUNCAN ROBERTSON.

CAMPBELL of Lochdochart gave in a complaint against Mr Duncan Robertson, that he had apprehended him with caption, notwithstanding he had the Lords' protection to appear and depone in a cause. Mr Duncan ALLEGED,---His caption was not for any debt, but to produce some writs and depone in an action at his instance; which was no breach of the Lords' protection, seeing it is a fundamental law in all government and societies that every one ought to bear witness to the discovery of the truth; and no protection can liberate a man from that natural obligation.

The Lords thought Mr Duncan should have applied to them for a warrant to

take him on his diligence, which they would not have refused ; and he having done it summarily at his own hand, they found it a contempt of their authority, and fined him in five dollars to the poor ; but ordained Lochdochart to depone upon Mr Duncan's act, and the messenger to detain him till he should appear before the Ordinary for parties' and witnesses' oaths ; seeing a protection is not designed to secure any against a fact prestable by himself, as deponing in a cause, or the like. *Vol. I. Page 742.*

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ANENT the REGISTER of HORNINGS.

1696. *December 12.*—GEORGE Robertson, keeper of the Register of Hornings, having deceased this last night, and some persons applying, by bill, to the Lords, to have their hornings and inhibitions marked and registrate ;—the Lords considered that the Earl of Selkirk, Clerk-register, (who had the filling of the vacancy,) was not in the kingdom, and that it could not admit of delay, or postpone the lieges' diligence ; therefore they nominated and appointed Alexander Gibson, one of their clerks, to mark and registrate all hornings, &c. till the place were filled, and another to officiate, he being countable to the register for the emoluments ; and, least any of the warrants or minute-books should miscarry, *medio tempore*, they sent two of their number, with a clerk, to the Horning-chamber, to secure and seal up the warrants, minute-books, and public records, and to have some of the defunct's nearest friends and relations present ; it being their interest, as well as the public's, that the same be not embezzled, but made forthcoming to the next successor in office. *Vol. I. Page 742.*

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1696. *December 15.* JAMES CLELAND, and other CREDITORS of BOYD of PINKILL, *against* BOYD of PINKILL'S RELICT.

JAMES Cleland, and other Creditors of Boyd of Pinkill, against the Lady, was reported. In July last there were 500 merks modified to her for an aliment during the dependence of the process of competition ; but the extracting being stopped by the creditors till this Session, it was now OBJECTED by the creditors, That the Lords, by the Act of Parliament in September last, are discharged to grant aliments except upon process, and after cognition taken.

ANSWERED,—The Act can have no influence nor retrospect to an aliment modified before, and that very deliberately done.

The Lords found the Act of Parliament did not reach this case, and decerned. *Vol. I. Page 742.*

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1696. *December 15.* ROBERT SANDERS of AULDHOUSE *against* BESSIE CORBET.

RANKEILOR reported Robert Sanders of Auldhouse against Bessie Corbet, his